

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of) FCC Mail Room
)
Westgate Communications LLC) CC Docket No. 96-45
d/b/a WeavTel)
)
Petition of Waiver of the Section 54.903)
Interstate Common Line Support)
Reporting Date)

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Westgate Communications LLC d/b/a WeavTel (“WeavTel”) pursuant to Section 1.3 of the Commission’s Rules¹ hereby requests a waiver, to the extent necessary, of Section 54.903(a) of the Commission’s rules specifically with respect to the Interstate Common Line Support (“ICLS”) submission date for projected data from an incumbent local exchange carrier.² As a result of an inadvertent oversight, WeavTel did not report projected data pursuant to Section 54.903(a)(3) and actual data pursuant to Sections 54.903(a)(2) and (4) of the rules and the Universal Service Administrative Company’s (“USAC”) requirements until June 27, 2007. This data is used by USAC to project and determine the calculation of Interstate Common Line Support (“ICLS”) and the amount of Universal Service dollars to be funded through contributions.

¹ 47 C.F.R. § 1.3.
² See 47 C.F.R. § 54.903(a).

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I. Background

USAC requires that rate-of-return companies submit projected information that allows USAC to calculate ICLS amounts for inclusion in the Universal Service Fund program for a coming year. The rules require incumbent local exchange carriers (“LECs”) that have been designated an Eligible Telecommunications Carrier (“ETC”) and serve 50,000 or fewer access lines within a study area to file ICLS projections no later than March 31 of the year preceding the calendar year in which the LEC expects to receive ICLS. For rate-of-return companies, projected carrier common line cost and revenue data, actual carrier common line cost and revenue data and number lines served used in the calculation of ICLS is submitted in order to receive ICLS for periods in the next year.³

On May 2, 2007, WeavTel management received a telephone call from Mr. Doug Neff of Johnson, Stone & Pagano P.S.(“JSP”), WeavTels’ consultant, after being contacted by Marilyn Porteous of the National Exchange Carrier Association (NECA) inquiring about the ICLS filing. For unknown reasons, WeavTel did not receive the data collection instructions, forms, or request letters for this filing. WeavTel requested that Mr. Neff of JSP assist WeavTel in handling this issue. Mr. Neff conducted a conference call between WeavTel and NECA. At that time, discussions on what was needed to be filed and how to go about filing it were determined.⁴

³ See 47 C.F.R. § 54.901(a).

³ WeavTel did timely file with the State of Washington, and the State filed with the Commission and USAC on September 20, 2005, prior to October 1, 2005, its state certification for HCL, ICLS, and LSS.

⁴ Much of the reporting of data, and subsequent dollar disbursements for the various Universal Service support components, including ICLS, are typically coordinated through NECA with USAC. Consequently, NECA is involved in the processes with USAC.

The NECA contact suggested that WeavTel send the information to USAC as soon as possible. Also the NECA contact informed Mr. Neff that a waiver of the Commission's Section 54.903 would be required.

Ms. Wasnock of JSP prepared the projected data and sent the data by electronic mail to Marilyn Porteous at NECA on May 14, 2007. The data submission also included a request for contact information to make sure USAC has the correct contact information for WeavTel.

II. Basis for Relief

Pursuant to Section 1.3 of the Commission's rules, the Commission may grant a waiver of the application of any of its rules for "good cause shown."⁶ As noted by the Court of Appeals for the D.C. Circuit, agency rules are generally presumed valid.⁷ However, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸

⁶ WeavTel notes that for wireless carriers, Section 1.925(b)(3) of the Commission's rules provides more specific waiver criteria including a showing that: (i) The underlying purpose of the rules would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. *See* 47 C.F.R. §1.925(b). As explained herein, the facts and circumstances for WeavTel are consistent with these waiver criteria and weigh in favor of grant of the request.

⁷ *See WAIT Radio v. FCC*, 418 F.2d 1164, 1166 (D.C. Cir. 1990, cert. denied, 409 U.S. 1027 (1972))("WAIT Radio").

⁸ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)("Northeast Cellular").

In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

WeavTel respectfully submits that all of the circumstances described above weigh in favor of the grant of a waiver. Strict application of the March 31, 2007 submission requirements date, particularly when the data was submitted three months later, would be contrary to the public interest. Allowing WeavTel to receive ICLS during 2007, now that it had filed the necessary data, will not cause any harm or burden for any other party.

The underlying purpose of the ICLS universal service support program is to provide cost recovery to small LECs for the costs of their interstate common line investment and expenses. As such, ICLS has been a substantial portion of WeavTel's recovery of its carrier common line costs. The purpose of ICLS is to provide support to companies for the interstate common line costs so that companies such as WeavTel do not have to recover these relatively higher costs through intrastate, basic rates. The availability of ICLS thereby avoids potentially higher basic rates that would be contrary to the established universal service principles of affordability and comparability. These purposes would be frustrated were WeavTel not to receive the ICLS for 2007.

⁹*Wait Radio* at 1159; and *Northeast Cellular* at 1166.

WeavTel's overall cost recovery would be thrown into disarray. WeavTel's overall ratemaking result would have to be adjusted and/or some of its plans for capital expenditures and network improvements would have to be curtailed or reevaluated were ICLS disbursements not available to the company. These results are inconsistent with the principles of universal service which support the deployment of modern networks and the availability of advanced services in rural areas as those served by WeavTel. Therefore, a grant of the waiver will service the same public interest objectives that the overall Universal Service Plan was designed to address. And without ICLS support, those purposes will be frustrated in a manner not consistent with the public interest.

The oversight in a data collection process that allows USAC approximately three months for the processing of such data is a circumstance relevant to an otherwise strict application of the reporting date rule. A short difference under a strict application would deny WeavTel of ICLS cost recovery, and would subject WeavTel to burdens associated with that cost recover denial.

Moreover, grant of the waiver request can be easily accommodated by USAC, without burden to any other carrier, within the already existing universal service process. WeavTel filed its projected accounting data well before the time period in which it is intended to be applied, and WeavTel had previously been a recipient of ICLS from its beginning.

The ICLS process already utilizes a "true-up adjustment" process that corrects the results of projected data from eligible LEC's with those carriers' submission of actual ICLS amounts at a later point in time.¹⁰

¹⁰See 47 C.F.R. § 54.903(b).

ICLS true-up adjustments take place as much as 14 months after the end of the calendar year for which actual data is submitted. USAC incorporates the results of the true-up process into its recalculations of total universal service fund needs in the calculation of the universal service contribution factor. As such, WeavTel's data and ICLS disbursement, upon expedited action by the Commission, can be included and "trued-up" through the established process.

III. Request for Expedited Action

Unless and until the Commission grants WeavTel's waiver request, it will be forced to forego the ICLS cost recovery revenues. As stated above, this cost recovery support is needed and used by WeavTel to support its ongoing costs and capital improvements to upgrade its network and provide advanced services. WeavTel has already submitted the required data to USAC. Moreover, expedited action will allow USAC to reflect this correction in the overall universal service plan as soon as possible.

WeavTel respectfully submits that the facts with respect to the precipitating events, the policy considerations associated with the grant of the waiver request, and the implications of granting the waiver are clear and straightforward. Upon grant of the waiver, USAC can adjust the ICLS disbursements to correct the past amounts using the ongoing true-up process. Accordingly, WeavTel requests expedited action by the Commission so that USAC can be properly notified as soon as practical so that future settlements and USAC's calculations can be corrected as soon as possible. In the absence of expedited action, WeavTel may be forced to pursue ratemaking changes inconsistent with universal service objectives and curtail, delay, or scale back planned network upgrades and other capital projects. This result would impose needless hardship on

unnecessarily its end users that would be denied the benefits the ICLS revenue would have supported.

IV. Conclusion

For the reasons stated herein, WeavTel submits that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will allow WeavTel to receive ICLS disbursements for the year remainder of 2007 consistent with the statutory goal of preserving and advancing universal service for the rural customers served by WeavTel. This result will be consistent with the public interest. Expedited action is requested to minimize the time that WeavTel will be prevented from receiving the ICLS cost recovery support that it expected to receive. Without the ICLS support, it will be the customers of WeavTel that will be burdened with potential rate changes, curtailed upgrades, or delays in the availability of advanced services. With the grant of the waiver, WeavTel will merely receive the ICLS that was intended under the universal service plan policies, and the grant of the waiver will not adversely affect any other carrier or customer.

Respectfully submitted,

WeavTel

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